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ATTORNEYS FOR DIRECT PURCHASER PLAINTIFFS

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE TELESCOPES ANTITRUST
LITIGATION**

Case No. 5:20-cv-03639-EJD

This Document Relates to:

Case No. 5:20-cv-03642-EJD

AURORA ASTRO PRODUCTS LLC,
PIONEER CYCLING & FITNESS, LLP,
JASON STEELE, and those similarly situated.

**JOINT REPORT RE: DEPOSITION
SCHEDULING PURSUANT TO
DECEMBER 20, 2023 ORDER
[DKT. 548]**

Plaintiffs,

V.

CELESTRON ACQUISITION, LLC, SUZHOU
SYNTA OPTICAL TECHNOLOGY CO., LTD.,
SYNTA CANADA INT'L ENTERPRISES
LTD., SW TECHNOLOGY CORP., OLIVON

Case No. 5:20-cv-03642-EJD

1 MANUFACTURING CO. LTD., OLIVON USA,
2 LLC, NANTONG SCHMIDT OPTO-
ELECTRICAL TECHNOLOGY CO. LTD.,
3 NINGBO SUNNY ELECTRONIC CO., LTD.,
PACIFIC TELESCOPE CORP., COREY LEE,
DAVID SHEN, SYLVIA SHEN, JACK CHEN,
JEAN SHEN, JOSEPH LUPICA, DAVE
ANDERSON, LAURENCE HUEN, and DOES
1-50,

5 Defendants.

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1 The undersigned parties respectfully submit this joint report in accordance with the Court's
 2 December 20, 2023 Order, which requires the parties to "advis[e] the Court of their agreed
 3 schedule for the foregoing depositions and of any remaining scheduling issues that require the
 4 Court's resolution by **January 9, 2024.**" (Dkt. 548 (emphasis in original)).

5 **DIRECT PURCHASER PLAINTIFFS' DEPOSITION SCHEDULE**

6 The following schedule reflects the parties' agreement for the 14 depositions subject to the
 7 Court's December 20, 2023 Order, and the 30(b)(6) deposition of Pioneer Cycle.

8	Witness	Deposition Date(s)
9	Rick Ayres 30(b)(6)	January 3, 2024
10	Claudia Pearson	January 9, 2024
11	Pioneer Cycle 30(b)(6)	January 12, 2024
12	Amir Cannon 30(b)(6)	January 22, 2024
13	Lance Lucero	January 26, 2024
14	Alan Hale 30(b)(6) ¹	January 29, 2024
15	Paul Roth 30(b)(6)	January 29, 2024
16	Jean Shen	February 8, 9, 2024
17	Corey Lee 30(b)(6)	February 12, 2024
18	Dave Anderson	February 19, 20, 2024
19	Joseph Lupica	February 26, 27, 2024
20	Min Ma	February 29, 2024
21	Sylvia Shen	March 4, 5, 7, 2024
22	Michael Sun (individual and 30(b)(6))	March 6, 8, 11, 12, 13, 2024
23	Jack Chen	March 13, 14, 15, 2024

24 DPPs understand that the differences between the two parties' schedules includes
 25 Defendants' deletion of the Pioneer Cycle 30(b)(6) deposition and disagreement with the overlap of
 26 dates on March 13, 2024 for the depositions of Michael Sun and Jack Chen.

27 Defendants raised for the first time in their section of this joint report that they are
 28 unilaterally cancelling the 30(b)(6) deposition of Plaintiff Pioneer Cycling & Fitness LLP, which is
 scheduled for January 12, 2024 and has been scheduled since September 2023. Under the Court's
 December 20, 2023 Order, "[n]o party may cancel party depositions that have already been
 scheduled as of the date of this order, absent a written stipulation or order of the Court, *including*

¹ The parties have agreed to schedule the further deposition of Mr. Hale in his individual capacity on the same day as his 30(b)(6) deposition, pursuant to the Court's Order at Dkt. 547.

1 *the previously scheduled depositions of DPPs' witnesses."* (Dkt. 548 (emphasis added).) DPPs
 2 have not stipulated to move the deposition and Defendants have not requested that it be cancelled.
 3 Defendants also provide no reason for unilaterally cancelling the Pioneer Cycle deposition other
 4 than that DPPs purportedly produced a smaller amount of documents than Defendants had
 5 anticipated. Defendants have not identified a single issue with DPPs' document production up to
 6 this point or in their report, nor have they identified any documents they contend are missing from
 7 DPPs' production. Defendants should not be permitted to unilaterally cancel the deposition at the
 8 eleventh hour, after the witness arranged to travel to San Francisco and take off work. The witness
 9 is currently scheduled to fly in tomorrow evening. DPPs respectfully request that the Court order
 10 Defendants to proceed with the 30(b)(6) deposition, as scheduled and ordered, on January 12, 2024,
 11 or forfeit the ability to take this deposition, which they do not need anyway.

12 As for the March 13, 2024 date for the depositions of Michael Sun and Jack Chen, DPPs
 13 understand that Defendants are objecting to the overlap in dates due to "logistical" challenges but
 14 have not explained what those challenges are and have not provided new proposed dates. The only
 15 reasonable way to schedule the depositions with minimal overlap on the dates Defendants provided
 16 for Sylvia Shen and Jack Chen (e.g., any three dates between March 4-15) and Michael Sun (March
 17 5, 6, 7, 8 & 11 – March 7, 8, 11, 12 & 13 – or March 11-15) is to schedule the depositions as DPPs
 18 have proposed above. Indeed, DPPs provided the dates to Defendants to consider after Defendants
 19 requested new dates. DPPs respectfully request that the Court order to proceed with the above
 20 dates, as scheduled.

21 DEFENDANTS' DEPOSITION SCHEDULE

22 The following deposition schedule is an accurate record of the dates offered by the Defendants,
 23 which was confirmed by the Plaintiffs via email, which differs than the one proffered by the DPPs
 24 above, and to which Defendants object to.²
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26
 27 ² Despite this Court's Order requiring the parties to meet and confer regarding any disputes, DPPs
 28 refused. Defendants sent multiple correspondence to DPPs requesting to confer on the outstanding
 depositions and other discovery issues, which DPPs refused. One example:

WITNESS	AVAILABLE DATES	DPP CONFIRMED DATES	DISPUTE
Rick Ayres 30(b)(6)	Jan. 3, 4 or 5	January 3	
Claudia Pearson	Jan. 8, 9 or 12	January 9	
Alan Hale 30(b)(6) and Paul Roth 30(b)(6) (being offered on same day)	Jan. 5, 15 or 29	January 29	
Amir Cannon 30(b)(6)	Jan. 18, 19, or 22	January 22	
Lance Lucero	Jan. 25, 26 or 30	January 26	
Jean Shen – <i>Remote</i>	Feb. 2&5, 6-7 or 8-9	February 8-9	
Dave Anderson	Feb. 12-13, 14-15 or 19-20	February 19-20	
Corey Lee 30(b)(6)	Feb. 12-13, 14-15 or 19-20	February 12-13	
Joe Lupica	Feb. 19-20, 21-22 or 26-27	February 26-27	
Min Ma	Feb. 27, 28 or 29	February 29	
Jack Chen and Sylvia Shen	March 4-15 (any three days for each witness within that range)		Defendants object to the DPPs' scheduling of the three depositions on March 13, which will cause logistical challenges due to their location. Defendants counsel cannot be in two locations on March 13
Michael Sun (individual and 30(b)(6)) - <i>Hong Kong</i>	March 5, 6, 7, 8 & 11 – March 7, 8, 11, 12 &13 – or March 11-15 At 5 p.m. PST/ 9 a.m. Hong Kong		Defendants object to the DPPs' scheduling of the three depositions on March 13, which will cause logistical challenges due to their location. Defendants counsel cannot be in

Garrett – Thank you. As you know, we are required to meet and confer by no later than tomorrow regarding the deposition schedule per Judge DeMarchi's Order. My availability is as follows:

- Today after 5:30 CST
- Tomorrow between 11-12:30 CST,
- Tomorrow after 2:30 p.m.

Please confirm your availability for one of these time slots as soon as possible to ensure compliance with the Court Order.

		two locations on March 13.
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Pursuant to the Court's December 20, 2023 Order (ECF 548), the parties were instructed to reschedule and complete fourteen depositions before March 15, 2024. In full compliance with this Order, Defendants submitted a schedule of deponents with three alternative dates for each of the witness based on their availability and number of days slotted for each witness, which is set forth above.

Due to the logistical challenges posed by multi-day depositions, there were not enough days in the calendar to propose three alternative possibilities for each witness without including overlapping days. Despite the tight scheduling constraints, Defendants proposed three alternative dates for each witness. This was achieved by confirming that Defendants were not insisting or suggesting overlapping depositions. Rather, Defendants' approach was to provide DPPs the flexibility to select the most convenient dates, given the logistical impossibility of non-overlapping alternatives for all the fourteen witnesses.

Defendants immediately brought up the dispute relating to the March 13 overlapping date, which was ignored by DPPs. DPPs refused to engage in a meet-and-confer despite multiple requests to confer. Defendants and their counsel are unable to be in two locations on the same date.

Defendants are also rescheduling the Rule 30(b)(6) deposition of Pioneer Cycle due to its intentionally delayed document production (and refusal to certify completion thereof), with only 938 documents being produced on January 3, 2024, despite their involvement in the case since April 2023, and Defendants repeated demands for responsive documents in advance of the scheduled deposition. Defendants will confer with DPPs in coordinating a new date for the deposition. DPPs' last-minute refusal to agree to the rescheduling of the Pioneer Cycle deposition is disingenuous, and violates the parties' previous meet-and-confers wherein Defendants made it clear that the deposition would be postponed if Pioneer did not timely produce documents, which they did not. During the December 21, 2023 meet-and-confer, Defendants counsel specifically advised DPPs that if documents were not produced well in advance of the January 12 deposition date, we would need to

1 postpone it. DPPs' counsel, Garrett Biedermann, said he understood, and said he still could not
2 provide us with a date certain of when the documents would be produced. As pointed out by the
3 DPPs, the deposition was scheduled in September based on the good faith belief that DPPs would
4 fulfill their discovery obligations and produce documents in a timely manner. Yet, they have not.
5 Rather, they dumped documents on Defendants after the New Year holiday – **more than four**
6 **months** after their serving their discovery responses. DPPs complain that they were blindsided by
7 Defendants' request to postpone the deposition. However, had DPPs conferred with Defendants, this
8 issue along with the other deposition and discovery issues could have been discussed.³

9 Defendants request that the Court deny DPPs' request that the January 12 deposition move
10 forward, and allow the parties to reschedule the deposition after Defendants had time to review the
11 documents, and obtain certification of document production completion.

REMAINING ISSUES

A. Direct Purchaser Plaintiffs' Position

DPPs seek further assistance from the Court on two issues. First, DPPs need to schedule three outstanding depositions of Defendants' 30(b)(6) witnesses, which DPPs previously noticed for December 2023, but which Defendants unilaterally took off calendar and now refuse to provide dates for: the 30(b)(6) depositions of Jean Shen, Laurence Huen, and Sylvia Shen. Second, Defendants have designated multiple 30(b)(6) witnesses on the same topics and have not explained why. Having more than one designee on the same topic will result in the very problems that Rule 30(b)(6) was designed to prevent because there will be no single witness responsible for answering questions.

²⁵ ³ The parties have a standing weekly meet-and-confer on Thursdays to discuss ongoing discovery issues. Prior to its commencement on January 4, Defendants' counsel requested that it be postponed for 1 hour, or at a later time on January 4, or the following day on January 5. Nine minutes before the start of the meet-and-confer, counsel for DPPs stated they were not available that afternoon to meet and confer, which Defendants understood they were also not available to meet at the scheduled time. Despite multiple follows up on availability to confer on the deposition schedule, along with other discovery issues, DPPs refused, and claimed that Defendants' cancelled it outright

1 **The three 30(b)(6) witnesses.** The Court has issued multiple Orders directing Defendants
 2 to agree on deposition scheduling. (Dkts. 440, 463, 477, 491, 548.) The Court's latest deposition
 3 scheduling Order, entered on December 20, 2023, directed Defendants to provide dates for their
 4 witnesses by January 3, 2024. (Dkt. 548 at 1, 3.) While the 30(b)(6) depositions of Jean Shen,
 5 Laurence Huen, and Sylvia Shen are not specifically listed in the December 20, 2023 Order (*see*
 6 Dkt. 548 at 1 (listing 14 depositions of Defendants' witnesses to be rescheduled)), they are part of
 7 the Court's August 2023 Order, which governed the original deposition schedule for most of
 8 Defendants' witnesses. (*See* Dkt. 491 (ordering Defendants' depositions to go forward on dates
 9 identified in deposition schedule at Dkt. 485, p. 5).) These three 30(b)(6) depositions were
 10 originally scheduled for December 7-8, 11-12 and 14-15, 2023, respectively. (Dkt. 485 at 5.)
 11 Defendants, however, unilaterally cancelled these depositions in the midst of the parties' meet and
 12 confers regarding the rescheduling of other depositions and the parties' submission of their
 13 December 11, 2023 letter brief on this issue. (Dkt. 543.)

14 DPPs have asked Defendants to provide dates for the remaining witnesses on multiple
 15 occasions so that the parties can come to a final agreement on the deposition schedule, and have all
 16 depositions concluded by March 15, 2024, as the Court ordered. (Dkt. 548 ("In view of the
 17 deadline for DPPs to file a motion for class certification (*see* Dkt. 537), **all of the above-**
 18 **referenced depositions must be completed by March 15, 2024.**") (emphasis in original).) DPPs
 19 requested dates on January 2, 3, 5, and 8, 2024, but Defendants refused to provide them, taking the
 20 position that because these witnesses were not specifically named in the Court's December 20,
 21 2023 Order, Defendants have no obligation to provide dates. At the same time, Defendants *did*
 22 provide dates for the 30(b)(6) deposition of Michael Sun even though it was not listed in the
 23 Court's Order, and some dates for the individual and 30(b)(6) depositions of Ben Hauck after DPPs
 24 asked for dates, even though these depositions were also not listed in the Court's December 20,
 25 2023 Order.

26 Accordingly, DPPs request that the Court order Sylvia Shen to appear for deposition in her
 27 representative capacity on February 5 and 6, 2024, that Laurence Huen be ordered to appear for his
 28

1 Rule 30(b)(6) on February 8 and 9, 2024, and that Jean Shen be ordered to appear for her Rule
 2 30(b)(6) deposition on the same dates as her deposition in her personal capacity.

3 **The duplicative 30(b)(6) witnesses.** Defendants designated multiple witnesses to testify on
 4 the same deposition topics for Defendant Celestron Acquisition, LLC. Specifically, Defendants
 5 have designated Corey Lee and Amir Cannon for Topic No. 2 on Celestron's sourcing and
 6 purchasing of telescopes, Amir Cannon and Ben Hauck for Topic No. 8 on Celestron's setting of
 7 payment and credit terms, and Corey Lee and Rick Ayres for Topic No. 19 on Celestron's
 8 document and ESI preservation efforts. When DPPs asked Defendants to redesignate one witness
 9 per topic or otherwise explain why they needed multiple witnesses for the same topic, Defendants
 10 refused. While Rule 30(b)(6) allows for multiple witnesses to testify on multiple topics, it does not
 11 allow Defendants to designate multiple witnesses for the same topic. DPPs respectfully request that
 12 Defendants be ordered to re-designate their witnesses on Topic Nos. 2, 8, and 19 and to provide the
 13 identities of their new designees by Friday, January 12, 2024.⁴

14 DPPs respectfully respond to the points raised by Defendants as follows:

15 **Further Deposition of Corey Lee.** The Court compelled Messrs. Lee and Hale sit for
 16 additional depositions to respond to certain questions posed by DPPs in their first depositions that
 17 they improperly refused to answer. (Dkt. 547.) The Court also ordered the parties to meet and
 18 confer regarding the documents Defendants clawed back at the depositions on the grounds of
 19 "privilege." DPPs have asked Defendants if they would withdraw their assertion of privilege over
 20 the documents at issue, and Defendants have thus far refused to answer. DPPs believe that it would
 21 be inefficient to schedule the 1-hour deposition of Mr. Lee before the privilege issue is resolved.
 22 The dates proposed by Defendants therefore, of January 16, 17 or 18, 2024 will not work for DPPs
 23 unless Defendants agree to remove their privilege objection and re-produce the documents to
 24 Defendants, which they have not agreed to do.

25 **Deposition of Ben Hauck.** The Court's December 20, 2023 Order requires that Defendants
 26 "identify at least **three alternative dates** on which **each witness** is available for deposition" and if
 27

28 ⁴ DPPs deposed Rick Ayres in his 30(b)(6) capacity on Topic No. 19 on January 3, 2024. It is DPPs' position that Defendants can no longer re-designate a witness for this topic.

1 a witness “will sit for multiple days of deposition, defendants must provide at least **three**
 2 **alternative sets** of dates on which the witness is available, with each set having the agreed number
 3 of deposition days.” (Dkt. 548 (emphasis in original).) Ben Hauck is being deposed in his
 4 individual and 30(b)(6) capacity. DPPs therefore asked Defendants to provide three alternative sets
 5 of dates for the two days that he will be deposed. Defendants have only provided January 16, 17,
 6 and 18, 2024 as proposed dates, which currently overlap with the exact dates they have provided
 7 for Mr. Lee’s deposition. Defendants should provide three alternative sets of dates, as ordered by
 8 the Court.

9 **B. Defendants’ Position**

10 Defendants object to DPPs’ purported “remaining issues” on the grounds that DPPs should
 11 not only be required to confer with the Defendants on these issues, but also DPPs should address
 12 them pursuant to the Court’s discovery dispute resolution procedure set forth in her Standing Orders,
 13 not as a joint status report specifically relating to the scheduling of depositions in ECF 548.

14 **Three 30(b)(6) Witnesses:** The three 30(b)(6) witnesses⁵ that DPPs demand were not
 15 included in their letter brief or the Court’s Order. As Defendants explained to DPPs via email,
 16 Defendants prioritized the fourteen depositions outlined in the Court’s Order and the DPPs’ letter
 17 brief. Efforts are underway to secure dates for the Rule 30(b)(6) depositions of Jean Shen, Sylvia
 18 Shen and Laurence Huen. Defendants object to DPPs unilateral dictation of deposition dates.

19 **Rule 30(b)(6) Deposition Designations:** Defendants objected and designated witnesses to
 20 DPPs’ broad Rule 30(b)(6) topics on August 9, 2023. DPPs brought this issue up for the first time on
 21 January 8, 2024 via email after already deposing Rick Ayres for four (4) hours on Topic 19. DPPs’
 22 deposition topics are so broad, which require Defendants to designate multiple witnesses on the
 23 topics. Rule 30b6 allows an entity to designate “one or more officers, directors or managing agents
 24 or other persons who consent to testify on its behalf. The rule “clearly permits the corporation to
 25 designate different people. *In re Vitamins Antitrust Litig.*, 216 F.R.D. 168, 172 (D.D.C.
 26 2003) (corporation is obligated to produce one or more Rule 30(b)(6) witnesses who are thoroughly
 27 educated about the noticed deposition topics and facts known to the corporation or its
 28

⁵ DPPs insisted on at least two occasions, including January 8, 2024, that Defendants produce Jack Chen as a Rule 30(b)(6) witness even though he has not been designated.

counsel). Defendants timely designated their witnesses to the topics without any timely objections by the DPPs. DPPs have waived any objection to Defendants' designations.

Other Depositions Offered: Pursuant to ECF 547 and DPPs' request, Defendants also offered the 1-hour deposition of Mr. Corey Lee to take place January 16, 17 or 18. DPPs refuse to respond or engage in a meaningful conference to discuss. Defendants also offered the individual and 30(b)(6) deposition of Ben Hauck on January 16, 17, or 18, and Defendants refuse to provide a response claiming, for the first time on January 9, 2024 at 6:16 p.m. that Defendants are required to provide three alternative dates for *each deposition*. Ben Hauck was not subject to the December 20, 2023 Court Order. The Court's Discovery Plan states: "In the event that any percipient witness who has received a deposition notice is likely to be designated as a Rule 30(b)(6) representative, or in the event that any Rule 30(b)(6) designee is likely to be deposed as a percipient witness, the parties will use reasonable efforts to coordinate so as to avoid multiple depositions of the same witness." (ECF 169 at ¶ E(4).

Given the constraints of the current schedule and the limited number of business days available, it is impractical to offer six alternative dates for the deposition of Ben Hauck. Consequently, Defendants respectfully urge the Court to direct the DPPs to select from the proposed dates, thereby preventing further delays and addressing their complaints about the Defendants being the sources of postponements.

Dated: January 9, 2024

Respectfully submitted,

BRAUNHAGEY & BORDEN LLP

By: /s/ Matthew Borden
Matthew Borden

Attorneys for Direct Purchaser Plaintiffs

FROST LLP

By: /s/ Christopher L. Frost
Christopher L. Frost

Attorneys for Defendants

ATTESTATION

Counsel for Direct Purchaser Plaintiffs hereby attests by his signature below that concurrence in the filing of this document was obtained from counsel for Defendants.

Dated: January 9, 2024

Respectfully submitted,

BRAUNHAGEY & BORDEN LLP

By: /s/ Matthew Borden
Matthew Borden

Attorneys for Direct Purchaser Plaintiffs